

106A(a) or” after “other than” in introductory provisions.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 104A of this title.

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

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511.	Liability of States, instrumentalities of States, and State officials for infringement of copyright.

AMENDMENTS

1990—Pub. L. 101-553, §2(a)(3), Nov. 15, 1990, 104 Stat. 2750, added item 511.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 104A, 115, 912 of this title.

§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to

have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2584; Pub. L. 100-568, §10(a), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, §202(3), Nov. 16, 1988, 102 Stat. 3957; Pub. L. 101-553, §2(a)(1), Nov. 15, 1990, 104 Stat. 2749; Pub. L. 101-650, title VI, §606(a), Dec. 1, 1990, 104 Stat. 5131.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The bill, unlike the present law, contains a general statement of what constitutes infringement of copyright. Section 501(a) identifies a copyright infringer as someone who “violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118” of the bill, or who imports copies or phonorecords in violation of section 602. Under the latter section an unauthorized importation of copies or phonorecords acquired abroad is an infringement of the exclusive right of distribution under certain circumstances.

The principle of the divisibility of copyright ownership, established by section 201(d), carries with it the need in infringement actions to safeguard the rights of all copyright owners and to avoid a multiplicity of suits. Subsection (b) of section 501 enables the owner of a particular right to bring an infringement action in that owner's name alone, while at the same time insuring to the extent possible that the other owners whose rights may be affected are notified and given a chance to join the action.

The first sentence of subsection (b) empowers the “legal or beneficial owner of an exclusive right” to bring suit for “any infringement of that particular right committed while he or she is the owner of it.” A “beneficial owner” for this purpose would include, for example, an author who had parted with legal title to

¹ So in original. Does not conform to section catchline.

the copyright in exchange for percentage royalties based on sales or license fees.

The second and third sentences of section 501(b), which supplement the provisions of the Federal Rules of Civil Procedure [Title 28, Judiciary and Judicial Procedure], give the courts discretion to require the plaintiff to serve notice of the plaintiff's suit on "any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright"; where a person's interest "is likely to be affected by a decision in the case" a court order requiring service of notice is mandatory. As under the Federal rules, the court has discretion to require joinder of "any person having or claiming an interest in the copyright"; but, if any such person wishes to become a party, the court must permit that person's intervention.

In addition to cases involving divisibility of ownership in the same version of a work, section 501(b) is intended to allow a court to permit or compel joinder of the owners of rights in works upon which a derivative work is based.

Section 501 contains two provisions conferring standing to sue under the statute upon broadcast stations in specific situations involving secondary transmissions by cable systems. Under subsection (c), a local television broadcaster licensed to transmit a work can sue a cable system importing the same version of the work into the broadcaster's local service area in violation of section 111(c). Subsection (d) deals with cases arising under section 111(c)(3), the provision dealing with substitution or alteration by a cable system of commercials or other programming; in such cases standing to sue is also conferred on: (1) the primary transmitter whose transmission has been altered by the cable system, and (2) any broadcast stations within whose local service area the secondary transmission occurs. These provisions are linked to section 509, a new provision on remedies for alteration of programming by cable systems, discussed below.

Vicarious Liability for Infringing Performances. The committee has considered and rejected an amendment to this section intended to exempt the proprietors of an establishment, such as a ballroom or night club, from liability for copyright infringement committed by an independent contractor, such as an orchestra leader. A well-established principle of copyright law is that a person who violates any of the exclusive rights of the copyright owner is an infringer, including persons who can be considered related or vicarious infringers. To be held a related or vicarious infringer in the case of performing rights, a defendant must either actively operate or supervise the operation of the place wherein the performances occur, or control the content of the infringing program, and expect commercial gain from the operation and either direct or indirect benefit from the infringing performance. The committee has decided that no justification exists for changing existing law, and causing a significant erosion of the public performance right.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-650 inserted "or of the author as provided in section 106A(a)" after "118" and substituted "copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a)." for "copyright."

Pub. L. 101-553 inserted sentences at end defining "anyone" and providing that any State and any instrumentality, officer, or employee be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

1988—Subsec. (b). Pub. L. 100-568 substituted "section 411" for "sections 205(d) and 411".

Subsec. (e). Pub. L. 100-667 added subsec. (e).

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set

out as an Effective Date note under section 106A of this title.

Section 3 of Pub. L. 101-553 provided that: "The amendments made by this Act [enacting section 511 of this title and amending this section and sections 910 and 911 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Nov. 15, 1990]."

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

CAUSES OF ACTION ARISING UNDER PREDECESSOR PROVISIONS

Section 112 of Pub. L. 94-553 provided that: "All causes of action that arose under title 17 before January 1, 1978, shall be governed by title 17 as it existed when the cause of action arose."

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL FORMS OF CIVIL PROCEDURE

Form of complaint for injunction and damages, see form 17, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Exclusive jurisdiction of district courts of actions arising under copyright laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Importation of copies or phonorecords without authority, see section 602 of this title.

Power of the Congress to regulate copyrights, see Const. Art. I, § 8, cl. 8.

Registration as prerequisite to infringement action and to certain remedies for infringement, see sections 411, 412 of this title.

United States as infringer, action in United States Court of Federal Claims, see section 1498 of Title 28, Judiciary and Judicial Procedure.

Venue in copyright actions, see section 1400 of Title 28.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 510, 602 of this title.

§ 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by pro-